

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3  
4 UNITED STATES OF AMERICA, )  
5 vs. ) Criminal Action  
6 DEBRA MULLOY, ) No. 18-10200-FDS  
7 Defendant )  
8 )  
9 )

10 BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

11 SENTENCING

12  
13  
14 John Joseph Moakley United States Courthouse  
15 Courtroom No. 2  
16 One Courthouse Way  
Boston, MA 02210

17  
18 December 12, 2018  
3:00 p.m.

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22  
23 Valerie A. O'Hara  
24 Official Court Reporter  
John Joseph Moakley United States Courthouse  
25 1 Courthouse Way, Room 3204  
Boston, MA 02210  
E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by MARK J. BALTHAZARD,  
4 ASSISTANT UNITED STATES ATTORNEY, 1 Courthouse Way, Suite 9200,  
Boston, Massachusetts 02110;

5 For the Defendant:

6 Dwyer LLC, by THOMAS E. DWYER, JR., ESQ., and JONATHAN C.  
7 CRAFTS, ESQ., 10 Derne Street, Boston, Massachusetts 02114.

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1 PROCEEDINGS

2 THE CLERK: All rise. Thank you. Please be seated.  
3 Court is now in session in the matter of United States vs.  
4 Debra Mulloy, Criminal Action Number 18-10200.

5 Would counsel please identify themselves for the  
6 record.

7 MR. BALTHAZARD: Good afternoon, your Honor,  
8 Mark Balthazard on behalf of the United States.

9 THE COURT: Good afternoon.

03:00PM 10 MR. DWYER: Your Honor, Thomas Dwyer on behalf of the  
11 defendant, Debra Mulloy, who is seated to my right.

12 THE COURT: Good afternoon.

13 MR. CRAFTS: Your Honor, Jonathan Crafts representing  
14 the defendant, Debra Mulloy.

15 THE COURT: Good afternoon. This is the sentencing of  
16 Debra Mulloy. I've received and read the pre-sentence report  
17 as revised through October 23rd, the plea agreement, the  
18 defendant's sentencing memorandum, which had multiple  
19 attachments, including letters from family members and  
03:01PM 20 supporters, and the government's sentencing memorandum filed  
21 November 1st.

22 Is there anything else I should have seen that I have  
23 not? Mr. Balthazard.

24 MR. BALTHAZARD: No, your Honor.

25 THE COURT: Mr. Dwyer.

1 MR. DWYER: No, your Honor.

2 THE COURT: Mr. Dwyer, I know you've had an  
3 opportunity to review the pre-sentence report. Have you gone  
4 over it with the defendant?

5 MR. DWYER: Yes, your Honor.

6 THE COURT: Is that correct, Ms. Mulloy?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Balthazard, are there any victims who  
9 wish to be participate in the proceeding?

03:01PM 10 MR. BALTHAZARD: Yes, your Honor, I'm sorry, I meant  
11 to ask when you listed the items that have been reviewed that  
12 the victim impact statement was attached to the PSR.

13 THE COURT: I'm actually not sure I saw it. Do you  
14 have a copy of it? Does the victim wish to speak?

15 MR. BALTHAZARD: The victim also wishes to speak. The  
16 victim impact statement had been submitted to the probation  
17 office, and if the Court has not --

18 THE COURT: Let me take a look at it because I don't  
19 think I've seen it, and then what I will do is I'm going to go  
03:02PM 20 through the objections and the PSR, the guideline calculation,  
21 and then at that point before argument and elocution, we'll let  
22 the victim speak.

23 MR. BALTHAZARD: It's been redacted, your Honor, in  
24 case it had been made public with the identification of the  
25 victim to be redacted.

1 THE COURT: All right. I've read the victim impact  
2 statement. Let me turn next to the objections. There were, I  
3 think to the extent that there were objections in the  
4 pre-sentence report, they've been addressed in one way or  
5 another, either through amendment of the report or calling  
6 certain facts to my attention.

7 In the defendant's memorandum, I think there are also  
8 objections to certain guideline enhancements. Do you want to  
9 be heard on that, Mr. Dwyer, vulnerable victim and so forth?

03:05PM 10 MR. DWYER: Well, I was, if this is the most  
11 appropriate time.

12 THE COURT: Yes.

13 MR. DWYER: Just give me one minute, if you may.

14 THE COURT: Yes.

15 MR. DWYER: The government has proposed to the  
16 probation department, and they have adopted the vulnerable  
17 victim enhancement.

18 Now, I think if you look at the First Circuit cases,  
19 primarily with respect to setting forth the affirmative  
03:06PM 20 standard that must be met as well as the four or five cases  
21 that were affirmed in the nature of those four or five cases  
22 where people were elderly patients, there was age and physical  
23 problems, I think that the standard -- and they were disabled,  
24 somebody, an accountant was taking money away from somebody in  
25 the 80's, I think if you look at the First Circuit cases, I

1 think it makes abundantly clear that those standards, those  
2 cases, the language of the guidelines, the commentary section  
3 with respect to the guidelines cannot in any way support the  
4 proposition of vulnerable victim.

5 Vulnerable victim we look at two ways: One, what was  
6 the status of the person who was the victim when the fraud  
7 began? Now, if you look at the status and you take Mr. [REDACTED],  
8 this is one of the most pronounced, decorated, awarded interior  
9 designers in the entire country, and that was his role at that  
03:07PM 10 time, and he has never changed that role.

11 He does projects here, New England, all over the  
12 country, Florida, I think Colorado, all over the country, so if  
13 you look, first of all, at Day One, the first day that my  
14 client uses the credit card on Newbury Street to buy a  
15 bracelet, on that Day One, the only relationship between her is  
16 as an employee, and he is an owner. He is not what they used  
17 to call in other litigation a protected class, in my opinion.

18 He is not, in my judgment, falls within the standard  
19 of the First Circuit, elderly, infirmed, et cetera, and so I've  
03:08PM 20 briefed this longer than I should have briefed it in our memo,  
21 but I think it captures the fact that his status, even if he  
22 lost his partner a year before, his status is different.

23 My client wasn't dealing with credit cards until a  
24 year after his partner died, and there's an allegation in here  
25 that sets up the scenario that we're dealing with grief, and

1 the grief, for the 12 months of grief is somehow turned this  
2 national interior design person into a vulnerable person for  
3 which my client takes advantage.

4 THE COURT: Okay. Do you want to respond to that?

5 MR. BALTHAZARD: I think the record is clear both in  
6 the PSR and in Mr. [REDACTED]'s victim impact statement that he was  
7 not involved at all in the financial aspects of the business.  
8 I don't dispute what Mr. Dwyer had to say about his -- the  
9 other aspects of the business, the design aspects of it but  
03:09PM 10 that he left all of the financial aspects of the business to  
11 his then late husband, that when his husband died, one, he was  
12 appropriately devastated and not paying attention to the  
13 business, and that Ms. Mulloy took the opportunity to offer to  
14 take on those financial parts of the business, which she did,  
15 which put her in a position to be able to commit these crimes  
16 and to steal, take more than two and a half million dollars  
17 from the business.

18 Based on that, she knew that at the time that he was  
19 vulnerable, vulnerability being no interest and no focus at all  
03:10PM 20 on the financial end, and she knew about that, and she also  
21 knew how he felt having just lost his husband, so she took  
22 advantage of those factors to put herself in a position to  
23 commit these crimes, and she did.

24 It would be entirely appropriate for the Court to  
25 conclude that he was a vulnerable victim and that this

1 enhancement applies.

2 MR. DWYER: Could I take ten seconds?

3 THE COURT: Yes, Mr. Dwyer.

4 MR. DWYER: There's not one case in the United States  
5 of America that supports the proposition that was just  
6 annunciated by Mr. Balthazard.

7 THE COURT: All right. You had another objection I  
8 think as well to the guideline calculation, Mr. Dwyer,  
9 financial hardship?

03:10PM 10 MR. DWYER: Well, waive that. I was going to say to  
11 you at the outset, I meant to say we have waived financial  
12 hardship, and the only other argument we have now or whatever  
13 point you wish is on the value of the loss. It is our position  
14 that the guideline at 26 far exceeds the value of the loss, and  
15 our view is that whether you look at post-*Booker* or you don't  
16 look at post-*Booker*, that this sum of money is extraordinarily  
17 high for a sentence of 63 months, of course, putting aside --

18 THE COURT: I think I'll let you make that argument,  
19 but I think that's not a guideline argument, in other words,  
03:11PM 20 the loss I think is not disputed of \$2.6 million, which fits  
21 into this category.

22 MR. DWYER: I have no objection to that.

23 THE COURT: All right. So let me rule on the one  
24 objection then. I think this could probably go either way, and  
25 so as a matter of prudence, I'm not going to apply the



1 two-level enhancement for vulnerable victim. I think there is  
2 certainly a good argument that as a grieving person, an older  
3 person, a person who the defendant knew was not involved with  
4 or attentive to the financial aspects of the business would  
5 qualify, but in order to avoid any appellate issue in that  
6 regard, I'm not going to apply the enhancement, so I will  
7 uphold that, and I think that takes care of the objections, if  
8 I understand it.

9 So let me turn to the guideline calculation. The base  
03:12PM 10 offense level is 7, there's a 16-level enhancement for the loss  
11 amount of \$2.6 million, a two-level enhancement for a  
12 substantial financial hardship and a two-level enhancement for  
13 abuse of a position of private trust. That brings us to a  
14 level 27 with a three-level reduction for acceptance of  
15 responsibility with the third level on government motion.

16 Mr. Balthazard, does the government so move?

17 MR. BALTHAZARD: That's correct, your Honor, yes.

18 THE COURT: All right. That motion is granted, so  
19 that gives us a level 24. The criminal history category is O,  
03:13PM 20 the criminal history category is I, and that produces, as I  
21 understand the way this works under the statute, the guideline  
22 range is 51 to 63 months, but Count 3, which is aggravated  
23 identity theft, is two years on top of that; am I correct?

24 MR. DWYER: Yes, your Honor.

25 PROBATION OFFICER: Yes, your Honor.

1 THE COURT: So that's the guideline range. The  
2 supervised release range is 1 to 3 years, although Count 3 has  
3 a one-year maximum. The fine range is \$25,000 to a little more  
4 than \$10,600,000, the restitution amount is \$2,654.346.95, and  
5 there's a special assessment of \$100 on each count for a total  
6 of \$300.

7 Is there any additional objection or correction to  
8 that calculation not previously raised? Yes.

9 PROBATION OFFICER: Your Honor, the fine would be  
03:14PM 10 20,000, not 25,000 with the change.

11 THE COURT: 20,000, thank you.

12 MR. DWYER: I have no objection.

13 MR. BALTHAZARD: No, your Honor, none.

14 THE COURT: All right. So that's the guideline  
15 framework, and why don't we now have the victim elocution.  
16 Mr. Balthazard.

17 VICTIM STATEMENT: Judge Saylor, I know that you have  
18 reviewed my victim impact statement and are certainly familiar  
19 with the elements of the case, so what I would like to do today  
03:15PM 20 is give you a little personal input into my life history and to  
21 help you better understand why the devastation that this woman  
22 caused me has been so effective.

23 At this point in my life, I've come to realize that a  
24 lot of the lessons we learn as children really form the people  
25 that we become. And as an example of that, growing up in the

1 50's as a gay kid was tough.

2 My father discovered early on that I was more  
3 interested in arts and crafts than baseball. He decided to  
4 turn his back on me and focus on my brother.

5 When his friends would make comments like, "There's  
6 the neighborhood pansy," it was hard for him, and it was very  
7 hard for me.

8 One positive element in this whole sort of dismal  
9 period of my life was my mom. My mom was always there. She  
03:16PM 10 always had my corner. She always had my back. I would come  
11 home from school hopelessly blue after being bullied by the  
12 other kids and she would comfort me.

13 She would turn to me and say, "You're terrific," and  
14 that was the kind of enthusiasm that I needed to go forward and  
15 go through it for another day.

16 The lesson I learned early in life is that while guys  
17 often can be competitive, your best friend more typically will  
18 be a woman. Your biggest cheerleader, your biggest supporter.  
19 I've lived that lesson all my life, and I've supported it and  
03:17PM 20 believed in it, and, frankly, until now, it's been true.

21 When Lee died, we had been together for 32 years, I  
22 was devastated, not so much because of the terrible, painful  
23 death he experienced, but for the first time in my life, I  
24 realized I really was alone.

25 When he was sick, he would often turn to me and say,

1 "When I die, I worry who will look out for you." And I was  
2 truly totally alone, no family, no one really to turn to.

3 Within weeks of Lee's death, Debbie approached me, and  
4 she said, "You know, I could do a lot more for you, I could  
5 help you work with the business." This was a Godsend to me.

6 When Lee and I started our business, our arrangement  
7 was that he would handle the business side of Bierly, Drake,  
8 and I would work with clients in design, and it was a wonderful  
9 relationship, but what it meant, I didn't know a lot about the  
03:18PM 10 nuts and bolts and the mechanics of running a business, so when  
11 Debbie made this offer, I was thrilled, I was overenjoyed, and  
12 I felt huge gratitude.

13 It was at a time when Lee had died, and so I had to  
14 contact my attorneys, again, a woman who I think is terrific,  
15 and I said I have to do a will because Lee's died, and I sat  
16 with Mary, and we talked about it, and I said, you know, I  
17 think I would like to have Debbie be my executor, and maybe she  
18 should be in charge of my living will.

19 And then this incredible sort of feeling of gratitude,  
03:19PM 20 I made her sole beneficiary of my estate, which just seemed a  
21 logical thing because here I was, again, with a woman who had  
22 come into my life, and she was going to help me get through a  
23 terrible time, and that's what she had volunteered to do.

24 I couldn't get over the personality change with Debbie  
25 and Michael. All of a sudden, they were warm and friendly,

1 invite me for dinner, they'd invite me on outings, and unlike  
2 anything I had experienced, but it was a total personal change,  
3 and I was ready to embrace it because it seemed like the  
4 logical sort of step in my life, and I did.

5 Little did I know that this was the beginning of a  
6 carefully devised scheme that would, had it continued, have  
7 destroyed me totally and the business that I spent my entire  
8 life to build.

9 This evil person recognized that she uncovered the  
03:20PM 10 perfect victim, delighted to hand over the reins of my life,  
11 and she could now exploit this for personal gain.

12 Almost immediately she started lobbying to replace our  
13 accountant, Andy Hall, who was an old friend, had been one of  
14 Lee's pallbearers and had helped us form our business. She  
15 said he had become lazy and complacent and really was too  
16 expensive and we really should find someone else, so I  
17 exceeded, and little did I realize this was probably, if there  
18 was one profound, stupid thing you do in your life, this was it  
19 because going forward, Debbie had no supervision, as she could  
03:20PM 20 do whatever she wanted to do. No one was checking the books,  
21 no one was reviewing information, as we went monthly, as Andy  
22 had done, and she had a total free reign. She could wreak  
23 havoc on a trusting sole.

24 She started on a small scale with minor charges that  
25 really went unnoticed. From there, her hunger grew, and in the

1 end amounted to millions that she squandered on frivolous  
2 purchases to feed her expanding ego.

3 These funds would have given her aging boss, which is  
4 me, a retirement. It also would have helped her coworkers get  
5 raises and bonuses, which they truly deserved, but this was her  
6 opportunity to grab the brass ring. She spent millions on  
7 fashion and jewelry. She became a philanthropist, the American  
8 Heart Association, with money that she stole from the business.

9 She basically plundered Bierly, Drake and also at a  
03:21PM 10 time that we may or may not remember was very tough on the  
11 economy. We were having a hard enough time as it was. Her  
12 hunger was insatiable.

13 When I found out one day that her only transportation  
14 was a pickup truck, I thought, gee, you know, I am so grateful  
15 to Debbie for what she's done for me, and wouldn't it be great  
16 if she had a car if she wanted to go out to dinner with Michael  
17 or go to a party, she could go in a car instead of a truck, so  
18 I gifted her a car.

19 And true to form, from that point on, every single  
03:22PM 20 expense incurred on that car was charged to the business.  
21 These were big expenses, repairs, maintenance but also weekly  
22 gas fill-ups were always accompanied by a trip to Dunkin'  
23 Donuts. I didn't realize you could spend that much money at  
24 Dunkin' Donuts.

25 At this point, our statements were diverted from the

1 office, so even if I had had a sense of wanting to research  
2 this, I couldn't have done it. Also, she transferred money  
3 from our bank, the Northmark Bank, to our line of credit to  
4 cover her tracks, and I now personally stand to owe Northmark  
5 Bank \$300,000, which I am personally committed for because of  
6 these efforts.

7 I find it interesting that in the two years since all  
8 this horror has come to light, Debbie has never displayed the  
9 slightest sense of remorse for her crimes, not to me, not to  
03:23PM 10 the company, not to her coworkers.

11 Her offer of cooperation, I find amusing. It was made  
12 after her guilty plea, and, obviously, intended to make people  
13 look upon her more favorably.

14 Her deposition was interesting. It was a litany of  
15 unfounded charges against coworkers somehow suggesting that  
16 because her coworkers were stealing on a minor level, this  
17 somehow exonerated her, and then we heard about the stores fed  
18 her wine and cheese, and somehow that was their doing, and  
19 that's why she went ahead and spent millions of dollars.

03:24PM 20 In conclusion, Judge Saylor, today I stand before you.  
21 Tomorrow is my 74th birthday. I work very hard to keep my  
22 business going because it's all I know and because I will never  
23 be able to be retire. I offer think of Lee Bierly.

24 Lee was a larger than life personality. He captivated  
25 everyone he met. When the cancer came, the pain, the

1 repetitive pain started to break his spirit. In the end,  
2 pancreatic cancer broke Lee. In the end, Debra Mulloy broke  
3 me.

4 THE COURT: Thank you, Mr. [REDACTED]. All right. With  
5 that, let me hear first from the government as to its  
6 recommendation.

7 Mr. Balthazard.

03:25PM

10 sentenced to a term of incarceration at the low end of the  
11 range as calculated by the Court, which would be 51 months plus  
12 the mandatory 24 months for the aggravated identity theft, in  
13 addition that she be ordered after serving her sentence to  
14 serve three years of supervised release, pay restitution of  
15 \$2,654,346.95. The government in light of that does not  
16 recommend any fine and that she be ordered to pay the \$300  
17 special assessment.

03:26PM

18 Clearly, this is a lengthy sentence that's being  
19 recommended, but in the government's view, this is both  
20 reasonable and necessary. Starting with the seriousness of the  
21 offense, as the Court has seen and heard, the amount of the  
22 loss in this case was very substantial, more than two and a  
23 half million dollars. It was a crime committed over a long  
24 period of time, a number of years, repeated acts of criminal  
25 conduct, repeated acts of stealing these funds. You've heard



1 the impact that this has had on the business, on Mr. [REDACTED], and  
2 on their employees.

3 I anticipate, and we've heard Mr. Dwyer will be  
4 arguing that the loss in some way overstates the seriousness of  
5 the offense or Ms. Mulloy's culpability. It appears to me that  
6 the loss accurately reflects the seriousness of the offense and  
7 the culpability.

8 This was a crime in which she controlled how much she  
9 took. She used the credit card, and she charged on it for  
03:27PM 10 whatever she wanted to the extent that she thought she could  
11 get away with, and that was entirely her decision.

12 The amount of the loss and what the guidelines reflect  
13 is exactly appropriate as far as the seriousness and the  
14 culpability. I point out, again, if there's an argument with  
15 respect to the guidelines and how that's -- whether the ranges  
16 are appropriate or whether the loss tables are inappropriate  
17 for some reason, that the guideline tables several years ago  
18 were readjusted, and, in fact, had she committed this crime  
19 several years earlier and been prosecuted, she would be in a  
03:27PM 20 range where the loss tables, she'd actually be a couple of  
21 levels higher than under the current guidelines that apply  
22 today.

23 I think it's also clear from the record that she only  
24 stopped because she thought she was going to be caught, and  
25 that's why she quit the job. There's no reason to think that

1 had she not thought that the jig was up and she had to leave  
2 that she wouldn't have continued to do this, wouldn't have  
3 continued to take money until the business ultimately had to go  
4 out of business, until they went bust and Mr. [REDACTED] lost even  
5 more money.

6 She did nothing to mitigate the crimes that she  
7 committed. When she thought she was going to be caught, she  
8 quit, but she didn't only quit, she went into the business, she  
9 took records, she took books, removed them, destroyed them,  
03:28PM 10 which meant that the victim, Mr. [REDACTED], the company, they had  
11 to hire forensic accountants to figure out what she had done,  
12 how much she had taken, how she did it, tried to reconstruct  
13 missing business records, and then when time went on, rather  
14 than taking the items that she had purchased and perhaps  
15 returning them or making them available so that they could be  
16 sold and paid some kind of restitution, instead, she apparently  
17 donated them, which meant that the victim in this case would  
18 get nothing out of all of the items that she had bought using  
19 his money.

03:29PM 20 She's paid no restitution. You heard from Mr. [REDACTED].  
21 She's done nothing in connection with the civil case other than  
22 appear for a deposition and essentially point fingers at other  
23 people as an excuse.

24 With respect to the aggravated identity theft,  
25 Mr. Dwyer in his sentencing memo has said that or suggested

1       there's something inappropriate about the government bringing  
2       this kind of charge.

3               I'd suggest that it's not really a close call in this  
4       case. She used another person's identification to carry out  
5       the crime. It served to help avoid detection. By using  
6       another card, it might have enabled her to point a finger at  
7       the person whose named on the card, both to avoid detection and  
8       make it more difficult to show that she was the one that  
9       committed the crimes.

03:30PM 10              Ultimately, it didn't turn out that way, but by using  
11       the card, using somebody else's identification, it had that  
12       possibility, and it also could have impacted on the card  
13       owner's credit had the bills not been paid.

14              She abused the trust. We heard how much Mr. [REDACTED]  
15       trusted her, that he made her not only an executor but a  
16       beneficiary, sole beneficiary of his will. Mr. Dwyer argues in  
17       his memorandum that her actions appear to defy logic but not  
18       really.

19              I think it is unusual in this case that she didn't  
03:31PM 20       seem to take the money and use it to line her pockets or to put  
21       it in bank accounts, but clearly she had a purpose, which  
22       appears to have been solely primarily to hurt Mr. [REDACTED] for  
23       reasons that are not at all clear.

24              It's stated in the memorandum that she perceived that  
25       he had been abusive to her, to other employees, that there were

1 slights against her, and I use the word "perceive" because  
2 there is no evidence that, in fact, that's the case, and I note  
3 in the PSR similar claims with respect to later jobs that she  
4 had.

5 In particular, I'm looking at paragraph 65 through 69  
6 of the PSR, so after she left Mr. Drake's employ, she went to  
7 work for another company, quit it, she claimed, because the  
8 owner was verbally abusive, then she went to another firm,  
9 where it's reflected that poor attendance, and abandoned her  
03:32PM 10 employment without any notice, and wouldn't consider rehiring  
11 her, and she worked for a cleaning company, quit because she  
12 disliked cleaning, worked for another company, was "weird."

13 So I'd suggest that the only slights were apparently  
14 in Ms. Mulloy's head. Objectively, this all rings untrue, as  
15 the Court has heard. She worked there for many, many years.  
16 She was well paid. She had a good salary. She received  
17 bonuses. She got increased responsibility. She went to  
18 Mr. [REDACTED] and said I'd like to help you out and work more on  
19 the finances, and he gave her that responsibility, both because  
03:33PM 20 he needed the help but because he trusted her.

21 And, again, she became the beneficiary of the will,  
22 the healthcare proxy. There's no reason objectively to look at  
23 this and to say that she was slighted or that she had been  
24 abused, and, in any event, had she been, the answer is walk  
25 away from the job, quit, go find something else.

1           That wasn't what she chose to do. Instead, she chose  
2           to impose severe financial harm on Mr. [REDACTED] and his company,  
3           and she got away with it because of the incredible trust he had  
4           in her.

5           When she said to him that they were having problems  
6           with their accounts, with cash flow and needed more money, he  
7           gave it to her, and he believed her reasons that customers were  
8           not paying fully, they weren't coming through with what they  
9           owed in a timely manner.

03:34PM 10           Instead of hiring an accountant to check the books and  
11           figure out what's going on here, he didn't because he trusted  
12           her, and for what, so that she could spend money, millions of  
13           dollars buying high end goods at boutiques, clothing and  
14           accessories, so much that she didn't even use all of it.

15           She appeared to just want to make herself out to be a  
16           big shot at these boutiques where she was treated like royalty  
17           because she was coming in there spending like she was the  
18           queen.

19           And as Mr. [REDACTED] pointed out, she's expressed no  
03:35PM 20           remorse. There's no sense of remorse in the PSR, there's no  
21           sense of remorse in the sentencing memorandum. It just  
22           attacked Mr. [REDACTED] really, went on and on about all the awful  
23           things he had done to her and how she had been mistreated.

24           Now, I know Mr. Dwyer will say that he wrote the memo  
25           and it's all him, but the attitudes that come through in the

1 sentencing memorandum are clearly based on what the defendant  
2 told him and what her views were.

3 There's nothing about her personal history or  
4 characteristics that suggest any more lenient sentence in this  
5 case. Any modest good works she performed are far outweighed  
6 by the crimes she committed, not suggesting there's a need for  
7 specific deterrence in this case, there's clearly a need in  
8 addition to the other factors, a need for general deterrence.

9 Employees steal from their employers far too often.

03:36PM 10 The amount here is exceptional. A significant sentence is also  
11 needed in order to send a message of deterrence to others, and  
12 those are the reasons for the government's recommendation, your  
13 Honor.

14 THE COURT: All right. Mr. Dwyer.

15 MR. DWYER: First of all, your Honor, I want to  
16 apologize for asking the Court to continue from the last  
17 hearing because I was ill-disposed.

18 I'm going to kind of go off my prepared script and  
19 address a couple things right away. First of all, while there  
03:36PM 20 are inferences or more than inferences in our sentencing  
21 memorandum about the toxic atmosphere at that firm, I want to  
22 make abundantly clear at this point that there's no  
23 relationship between that and the misconduct by my client.

24 This is not a but for situation where but for that  
25 chaos, she would not have stolen the money. This is not a

1 situation where, although it is perceived in the papers, I  
2 think primarily because of the levity of the government's  
3 position, this is not a case where she stole the money because  
4 she hated [REDACTED].

5 This is in my judgment based upon my 38 years in the  
6 game, it is in my judgment where a woman went to a shop on  
7 Newbury Street, saw the big time purchases, realized she could  
8 do it herself, she went back to two stores and did it, and she  
9 took the product, put it into bags into her house until after  
03:37PM 10 she left the firm.

11 I have sought to figure out what the pathology is  
12 behind all of that, and I have been unable to figure it out. I  
13 think it's clearly some type of personality disorder, but in  
14 essence it is she stole the money, so it had to be greed or  
15 essence that she stole the money.

16 Now, to go to Mr. [REDACTED]'s point, you know, to get  
17 respect for it, to go to Mr. [REDACTED]'s point, there is no  
18 question that she violated the trust, and she is being  
19 penalized for that in the sentence calculation, but there's  
03:38PM 20 also no question that she was recently sued by Mr. [REDACTED], a  
21 highly competent lawyer, who's one of the amata of lawyers that  
22 are in the back here representing Mr. [REDACTED], and she was sued,  
23 and she was asked to come in and talk to counsel, and she went  
24 in for four or five hours and talked to counsel and expressed  
25 her sorrow for not doing it and explained in detail how it came

1 about.

2 She did not at any point during that dialogue, and  
3 half of it was a transcript, she did not in any way, manner, or  
4 form blame anyone else but herself, but what she did do was  
5 because the plaintiff lawyer knew she had no money, she's in a  
6 negative net worth, they weren't interested in her, what they  
7 were interested is this, they were interested in the two stores  
8 that she went to because they felt that in both of those  
9 stores, the owners and salespeople facilitated the fraudulent  
03:39PM 10 use of the credit card.

11 Now, as it turns out, that's what happened, and it  
12 turns out that's what she said at the interview, that's what  
13 she said in the two-hour transcript, and that's what she said  
14 in the four- or five-hour deposition last Friday.

15 Now, you can't reconcile, you cannot reconcile the  
16 fact that 100 percent of the factor is she wants to hurt the  
17 firm and the fact that she's helping the firm. Without her  
18 assistance, your Honor, [REDACTED] will collect nothing on  
19 this lawsuit, which was why I urged you, although there is not  
03:40PM 20 an abundant of law on this point, as I've discovered, urged you  
21 that when you are considering the cooperation component here,  
22 which you are entitled to consider under 1553, I think it is,  
23 even if there's no 5K1, that because you have a restitution  
24 element in your upcoming order that that assistance to [REDACTED]  
25 lawyers will go against the restitution order, as we can



1       imagine.

2               I'm sorry, I never get it right, 3553, that will go  
3       against the restitution, so I'm saying even without this and  
4       with this, there is a link between her cooperation. This idea,  
5       I mean, Mr. [REDACTED] listened to the deposition last Friday.

6               The idea that she blamed other people is ridiculous.  
7       That never happened. Her lawyer was asked, was there anyone  
8       else that stole money there, and she says yeah, A, B, C, D  
9       stole money, this is why they did, she never backed off of what  
03:41PM 10       she stole.

11              So she admitted every 20 seconds that she had  
12       committed the crime, and every 120 seconds, she offered to  
13       cooperate. Now, that is why I think that under the cooperation  
14       issue that you're entitled to consider under -- let me see if I  
15       can get it right this time -- 18 U.S.C., 3553, you're entitled  
16       to consider that under the case law and under the practice.  
17       You're not required to do anything, but you're entitled to  
18       consider whether or not the level of cooperation.

19              Now, you're also entitled to consider under the case  
03:42PM 20       law and this First Circuit particularly, you're also entitled  
21       to consider that, what, two four-hour sessions between my  
22       client and the U.S. Attorney's Office.

23              Now, during that my client talked about these two  
24       stores and these people at these two stores, but I fully  
25       understand why, you know, the Department of Justice wasn't

1 going to take more time to chase down a couple of people in  
2 stores, but she did, in fact, relay that information, and under  
3 the First Circuit, I'm not talking about a large points for it,  
4 but I do suggest that it's worth considering on the fact of the  
5 cooperation.

6 She did instantly -- I talked to Mr. Balthazard before  
7 the clothes were out of the house of the FBI raid and went in  
8 to see him or called him right away. She was in the office, I  
9 think within a week, ten days making a proffer, and she was  
03:43PM 10 back showing the FBI agents all the detail about all the  
11 records.

12 And the idea that she scurried out of the firm with a  
13 lot of the records, she had firm records, which we put into a  
14 carton and returned to the civil lawyer that was on this case,  
15 the first civil lawyer, which is different than the second  
16 civil lawyer, so if I could just deal with those two topics  
17 because I do think that we could debate about value of the  
18 loss, but I think you've heard it 25 times or 125 times, but I  
19 do think in this particular case, facing this guideline  
03:43PM 20 calculation, you know, of offense level 24, this is 51 months,  
21 and I realize it's \$2.7 million, but 51 months is a, you know,  
22 is a large number, okay, for something like this where, in many  
23 ways, you can't even understand what happened here.

24 I mean, I believe there's no question she lost her  
25 way, there's no question that moral compass, there's no

1 question that I agree with Mr. Balthazard that she got caught  
2 up in all the stuff, but ask yourself if you've seen in your  
3 whole legal experience a fraud case where a woman takes  
4 \$2.7 million of clothes and puts it in green bags and puts it  
5 in her house and does not sell it until she leaves.

6 Quite frankly, I have been unable -- I've been in this  
7 case I don't how long, I've been unable to figure out the  
8 answer to that.

9 If I could have one minute, your Honor, because I'm  
03:44PM 10 cutting, you'll be happy to hear.

11 Her character and involvement in the community and the  
12 friends, you've read the letters.

13 And, of course, she cooperated with probation as well,  
14 she cooperated with the mental health examiner from probation  
15 as well. I've discussed the civil suit.

16 I think you already know from the probation report her  
17 basic character, and, you know, you have the letters in the  
18 back that show how generous and caregiving that she is, and  
19 it's hard to explain.

03:45PM 20 When she left Bierly-Drake, one of the things she was  
21 starting to do in February and March is look online for these  
22 online prayer groups. I've never heard of them, but apparently  
23 they exist, online prayer groups, and during these online  
24 prayer groups at the time of lent, there was some consensus on  
25 the online groups that you should give up during lent by giving

1 things away, and that is the point where she started taking  
2 these clothes and going away.

3 It was basically 100 percent of the clothes she took,  
4 she gave away 50 percent, 25 percent went to consignment shops,  
5 a lot of which came back to the FBI, and the FBI, I think,  
6 picked up about 25 percent at the house.

7 Now, I agree with Mr. Balthazard, I really do, I agree  
8 with Mr. Balthazard that on the identity theft to me is just,  
9 you know, we pled to it, okay, so it's not one of these  
03:46PM 10 situations where we pled to it, however, it's not a crime,  
11 that's not what was said. We pled to it, period.

12 The only thing I wanted to raise, and maybe it's just  
13 because it makes me happy to raise it, and that is that this  
14 policy was not around since Sessions' memo in this office until  
15 this case, I believe we were the first or the second. There's  
16 nothing Mr. Balthazard can do about it. There's nothing he can  
17 do about it at all, and someone some day may argue that the  
18 conduct in this case doesn't really fall within the statute,  
19 but, you know, we had to just get through the case, and that is  
03:47PM 20 what we had to do.

21 So on the issue of -- just let me one second because  
22 I've gone out of order, and I think that I've done cooperation,  
23 so that ends that. I hate to impose upon your Honor, but I'm  
24 trying to shorten this thing down.

25 I'd like to ask you to consider the loss of the value

1 argument, which we just touched upon briefly again, and I know  
2 that the, you know, you've heard other lawyers like me talk  
3 about the fact of, you know, more than half of the cases since  
4 2003 have gone below the guidelines on this issue, and I do  
5 know you probably heard the American Bar Association has raised  
6 issues with respect to this so-called shadow guidelines, which,  
7 again, I think overstates, you know, the enhancement.

8 And so I think -- give me one second here. I just  
9 think on this cooperation thing, I think when there's an FBI  
03:48PM 10 raid and you call up and say I want to bring my client in,  
11 Mr. Assistant U.S. Attorney, and bring your client in, your  
12 client admits the conduct and said, you know, this is how I did  
13 it.

14 I mean, I don't think you have to bring in a little  
15 index card with bold letters that say I'm sorry, you know, I  
16 don't think you have to come in with an index card in red that  
17 says I'm guilty, I mean, you come in and you just say, you  
18 know, I did it, and I'm going to cooperate, and when you're  
19 talking about this civil case, and I have great respect, as I  
03:49PM 20 said, for Mr. [REDACTED].

21 But you talk about this, we sat there for eight hours  
22 admitting what we did and trying to help him, and I suppose if  
23 I knew that he was going to say this today, I would have  
24 brought a big poster in the room and had her read the poster  
25 that says I'm very, very sorry, that she does the five-hour

1 deposition.

2 So I think that basically, your Honor, I have little  
3 to add. As I said before, my client simply lost her way, in my  
4 judgment, part of this, just the motive to me remains a  
5 mystery. The moral compass that guided her conduct up to 51  
6 years of age was simply set aside; however, she now faces your  
7 judgment with the hope that this presentation will set a  
8 framework for your mercy. Thank you.

9 THE COURT: All right. Thank you.

03:50PM 10 Mr. Balthazard, do you want to respond?

11 MR. BALTHAZARD: Just with respect to the cooperation,  
12 there was no -- nothing that amounts to substantial assistance,  
13 and, in fact, my memory is that Mr. Dwyer and his partner came  
14 in, spent some time with us, presented a number of areas where  
15 she might provide assistance. None of it was any interest, all  
16 would have relied simply on Ms. Mulloy's say-so, which she had  
17 no credibility, and nothing came of any of it.

18 I can't speak at all to what efforts were made with  
19 respect to the civil case. That was news to me until yesterday  
03:51PM 20 or the day before that there had been a deposition, and, again,  
21 my understanding is she was ordered, there was a Court Order  
22 that she come in and be deposed, and that she -- whether it was  
23 an order or a subpoena, but that she did come in. She didn't  
24 take The Fifth, she answered questions. What may come of it, I  
25 have no idea. I think that's really it, your Honor.

1 THE COURT: Okay. Ms. Mulloy, do you wish to address  
2 the Court before I impose sentence?

3 THE DEFENDANT: No, I don't, I'm sorry.

4 THE COURT: All right. I'm not sure where to begin  
5 except maybe to acknowledge what other people have said that  
6 this is a somewhat bizarre crime. I'm not sure I understand  
7 what went on here or what its purpose was, but the crime was  
8 submitted, nonetheless.

9 Whether it was agreed or revenge or something else,  
03:52PM 10 she did commit the crime. Whether other -- whether boutique  
11 owners or other people in some way facilitated it is not really  
12 before me. The crime was committed, and it's not an impulsive  
13 crime, by any stretch of the imagination. It was a calculated  
14 series of acts, repeated acts of theft over many years, in  
15 violation of a position of private trust with a man, who  
16 although she claims was abusive to her thought highly enough of  
17 her to not only give her opportunities but to actually name her  
18 as the beneficiary of his will.

19 The great majority of the people I sentence had  
03:53PM 20 horrible background in some form or another, they were crack  
21 babies, their mothers were prostitutes, their fathers abandoned  
22 them, they grew up in poverty and violence in Central America  
23 or the South Bronx or stories like that that are  
24 heart-breaking. That's not the situation here. There's  
25 nothing of that sort in the defendant's background. In fact,

1 she appears to have grown up in a loving and supportive home.

2 She wasn't a drug addict. A lot of crimes, of course,  
3 are motivated by addiction, and we don't have that here. I  
4 don't know what the psychology of any of this is, but I don't  
5 have a psychiatric report. I'm not going to speculate that she  
6 has one disorder or another.

7 As far as the evidence of her remorse, I have to say  
8 I'm having trouble seeing it, even if she did agree to be  
9 deposed in the civil litigation, which is good, it's a positive  
03:54PM 10 factor, but, again, I don't see any expression of sorrow,  
11 sadness, remorse, the kinds of things one would hope to see  
12 under the circumstances.

13 I agree with the proposition that it looks like she  
14 stopped because she was likely to get caught, and then she set  
15 about destroying various books and records of the crime to make  
16 matters worse.

17 As to a couple arguments that were made in terms of  
18 whether loss is the right measure here, putting aside how it  
19 impacts the guidelines, I think the loss is exactly the right  
03:55PM 20 measure here.

21 Sometimes loss and gain don't add up. You could have  
22 someone who steals \$10,000 and destroys a \$10 million company.  
23 That's not what happened here, or sometimes you have stock  
24 fluctuations or real estate valuations that go up and down or  
25 whatever, and things somehow get out of whack, but she decided



1 exactly how much she stole, and that's the measure of her  
2 crime, and, again, it wasn't an impulse, it wasn't just what  
3 happened to be in the cash register or the safe that day, she  
4 she knew what she was stealing when she stole it.

5 As to the aggravated identity theft, I'm not by any  
6 means a fan of this statute, which, of course, ties my hands to  
7 some extent. I don't like mandatory sentencing statutes, and  
8 this is a consecutive mandatory statute.

9 I would be delighted if it were repealed or delighted  
03:56PM 10 if it weren't charged, but it is charged, she pleaded guilty,  
11 and I have to live with what the statute says, and Congress  
12 pretty clearly, for whatever reason, has concluded that it  
13 needs to be a two-year mandatory consecutive sentence, and I've  
14 been forced to impose it under circumstances that were much  
15 more sympathetic than this.

16 So where does all that take me? The government is  
17 recommending a 75-month sentence, 51 months being the bottom of  
18 the guidelines, as I've calculated them, plus 24 for the  
19 mandatory two-year consecutive sentence.

03:57PM 20 What I'm going to do is this, and it's a little more  
21 than an act of mercy. I'm going to take some time off that.  
22 I'm going to give her a sentence of 69 months, which is 45  
23 months plus 24. It's a significant sentence for someone of her  
24 age with no criminal record. It is more than five years in  
25 prison, which I think is enough to make the point under the

1 circumstances.

2 I don't mean by doing that to suggest in any way that  
3 she's not entirely deserving of that sentence, and she's  
4 probably deserving of much more, but I think that's what the  
5 appropriate sentence is under the circumstances.

6 I will, of course, impose a restitution order and a  
7 three-year term of supervised release. And, again, there was a  
8 good argument that she deserves a longer sentence than that,  
9 but that is the sentence that I will impose.

03:58PM 10 All right. My practice, as you probably know, is to  
11 state the sentence that I'm going to impose followed by a  
12 formal statement of the reasons for the sentence if I haven't  
13 done so already, after which I'll give counsel an opportunity  
14 to make a final set of objections or corrections.

15 Mr. Dwyer, do you have any recommendations you'd like  
16 me to make concerning the place of her incarceration or  
17 anything of that sort?

18 MR. DWYER: Danbury, please, FCI-Danbury and a  
19 self-report date that's, I don't know, we can set a date here,  
03:59PM 20 but whether or not we have to wait but a self-report date at  
21 the end of January possibly.

22 THE COURT: What is the government's view of  
23 self-reporting?

24 MR. BALTHAZARD: The government has no objection, your  
25 Honor.

1           THE COURT: All right. Would the defendant please  
2 stand. Pursuant to the Sentencing Reform Act of 1984 and  
3 having considered the sentencing factors set forth at  
4 18 United States Code, Section 3553(a), it is the judgment of  
5 the Court that the defendant, Debra Mulloy, is hereby committed  
6 to the custody of the Bureau of Prisons to be imprisoned for a  
7 term of 69 months.

8           The Court makes a judicial recommendation that she  
9 serve her term of incarceration at FCI-Danbury or at another  
04:00PM 10 suitable facility as close as possible to Massachusetts.

11           The prison term consists of terms of 45 months on  
12 Counts 1 and 2 to be served concurrently and a term of 24  
13 months on Count 3 to be served consecutively to the terms  
14 imposed on the other counts.

15           Upon release from imprisonment, the defendant shall be  
16 placed on supervised release for a term of three years. This  
17 term consists of terms of three years on Counts 1 and 2 and one  
18 year on Count 3, such terms to run concurrently.

19           Within 72 hours of release from custody of the Bureau  
04:00PM 20 of Prisons, the defendant shall report in person to the  
21 district to which she is released.

22           It is further ordered as a condition of supervised  
23 release that she make restitution in the amount \$2,654,346.95  
24 to Bierly-Drake Associates, Inc., care of their counsel,  
25 William Sinnott.

1           Payment of the restitution shall begin immediately  
2           according to a Court-ordered repayment schedule. I'm sorry,  
3           payment of the restitution shall begin immediately according to  
4           the requirements of the Federal Bureau of Prisons' inmate  
5           financial responsibility program while incarcerated and  
6           according to a Court-ordered repayment schedule during the term  
7           of supervised release.

8           All restitution payments shall made to the clerk,  
9           U.S. District Court for transfer to the identified victim. The  
04:01PM 10          defendant shall notify the United States Attorney for this  
11          district within 30 days of any change of mailing or residence  
12          address that occurs while any portion of the restitution  
13          remains unpaid.

14                 Is there a live forfeiture issue, Mr. Balthazard?

15                 MR. BALTHAZARD: There is not, your Honor.

16                 THE COURT: All right. While on supervised release,  
17          the defendant shall comply with the following terms and  
18          conditions:

19                 She must not commit another federal, state or local  
04:01PM 20          crime.

21                 She must not unlawfully possess a controlled  
22          substance.

23                 I'm going to suspend drug testing conditions based on  
24          my determination that she poses a low risk of future substance  
25          abuse.

1           She must cooperate in the collection of DNA as  
2           directed by probation.

3           She shall comply with the standard conditions that  
4           have been adopted by the Court, which are set forth at  
5           Section 5D1.3C of the Sentencing Guidelines, and which will be  
6           set forth in detail in the judgment.

7           She's prohibited from engaging in an occupation,  
8           business or profession in the financial field that would  
9           require or enable her to have access to other people's  
04:02PM 10          financial information.

11          She must participate in a mental health treatment  
12          program as directed by probation.

13          She must pay the balance of any restitution imposed  
14          according to a Court-ordered repayment schedule.

15          She's prohibited from incurring new credit charges or  
16          opening additional lines of credit without approval of  
17          probation while any financial obligations remain outstanding.

18          You must provide the probation office access to any  
19          requested financial information, which may be shared with the  
04:02PM 20          financial litigation unit of the U.S. Attorney's Office, and  
21          she'll be required to contribute to the costs of evaluation,  
22          treatment, programming, and/or monitoring based on the ability  
23          to pay or availability of third-party payment, and it is  
24          further ordered that the defendant shall pay to the  
25          United States a special assessment of \$300, which shall be due

1 immediately.

2 All right. You may be seated. In terms of the formal  
3 reasons for the sentence, it's a nonguideline sentence imposed  
4 under Section 3553(a) for the reasons indicated.

5 The terms of supervised releases I think are  
6 appropriate to ensure adequate supervision and to ascertain the  
7 defendant's ability to make restitution payments.

8 I'm imposing no fine because to the extent the  
9 defendant has any financial assets, they should go to the  
04:03PM 10 victim and not to the Federal Government, and the special  
11 assessment is, of course, mandatory.

12 Do counsel have any addition or correction or  
13 objection to that sentence not previously stated?

14 MR. DWYER: No, your Honor.

15 MR. BALTHAZARD: No, your Honor.

16 THE COURT: All right. The sentence is imposed as  
17 stated. I will order that she self-surrender at the  
18 institution designated by the Bureau of Prisons six weeks from  
19 today, and I believe there was a waiver of appeal; am I right?

04:04PM 20 MR. BALTHAZARD: Yes, your Honor.

21 THE COURT: All right. Ms. Mulloy, I understand from  
22 the plea agreement that you've waived your right to appeal your  
23 conviction and sentence; nonetheless, I'm going to advise you  
24 of your right to appeal. I don't mean to confuse you. I'm  
25 doing it as a precaution in case for some reason your waiver of

1 rights does not apply or is not effective, and you'll have to  
2 consult with your counsel to see whether or not that is true.

3 If you have not waived it, you may be able to appeal  
4 your conviction if you believe that your guilty plea was  
5 unlawful or involuntary, or if there was some other fundamental  
6 defect in the proceeding that you have not waived.

7 You may have the right to appeal your sentence under  
8 some circumstances, particularly if you think the sentence was  
9 contrary to law.

10 If you're unable to pay the costs of appeal, you may  
11 ask permission to have those costs waived and appeal without  
12 pain. You must file any notice of appeal within 14 days after  
13 the entry of judgment, and if you request, the clerk will  
14 immediately prepare and file a notice of appeal on your behalf.

15 And, again, I understand that you have waived your  
16 right to appeal.

17 MR. DWYER: That's correct, your Honor.

18 THE COURT: All right. Is there anything further,  
19 Mr. Balthazard?

04:05PM 20 MR. BALTHAZARD: No, your Honor.

21 THE COURT: Mr. Dwyer.

22 MR. DWYER: No, your Honor.

23 THE COURT: All right. Before we break, Mr. [REDACTED], I  
24 want to indicate that my heart certainly goes out to you, and I  
25 wish you well in your recovery to the extent that you can

1 recover from this set of events. All right. Thank you.

2 THE CLERK: All rise.

3 (Whereupon, the hearing was adjourned at 4:05 p.m.)

4  
5 C E R T I F I C A T E

6 UNITED STATES DISTRICT COURT )

7 DISTRICT OF MASSACHUSETTS ) ss.

8 CITY OF BOSTON )  
9

10 I do hereby certify that the foregoing transcript,  
11 Pages 1 through 40 inclusive, was recorded by me  
12 stenographically at the time and place aforesaid in Criminal  
13 Action No. 18-10200-FDS, UNITED STATES of AMERICA vs.  
14 DEBRA MULLOY and thereafter by me reduced to typewriting and is  
15 a true and accurate record of the proceedings.

16 Dated this October 7, 2019.  
17

18 s/s Valerie A. O'Hara  
19

20 \_\_\_\_\_  
21 VALERIE A. O'HARA

22 OFFICIAL COURT REPORTER  
23  
24  
25